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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

11 ILLINOIS NATIONAL INSURANCE  
12 COMPANY,  
13 Plaintiff,  
14 v.  
15 WYNDHAM WORLDWIDE OPERATIONS,  
16 INC; WYNDHAM WORLDWIDE  
17 CORPORATION; WYNDHAM VACATION  
OWNERSHIP, INC.; and WYNDHAM  
RESORT DEVELOPMENT  
CORPORATION,  
18 Defendant.

CASE NO. 09-1724

20 STATE OF CALIFORNIA  
21 SS  
22 COUNTY OF LOS ANGELES

24 I, ROBERT KERN, ESQ., of full age, being duly sworn according to law, upon my oath  
25 depose and say that:

26 1. I am an Attorney-at-Law and a member of the State Bar of California and a  
27 partner at Kern and Wooley LLP, located in Los Angeles, California.

1       2.     Star Net Insurance Company (administered by Berkley Aviation "Berkley")  
2 provides non-owned aircraft coverage to Wyndham Worldwide Operations, et al.  
3 ("Wyndham") by virtue of issuing the corporate contingent aviation liability policy no.  
4 BA08N1038S.

5       3.     On or about August 5, 2008, Berkley was placed on notice by Wyndham of  
6 potential liability arising out of the airplane accident in Gearhart, Oregon (the "Accident").

7       4.     On or about August 6, 2008, Berkley confirmed coverage to Wyndham, et al.,  
8 without reservation.

9       5.     On or about August 6, 2008, Berkley retained the law offices of Dombroff  
10 Gilmore Jaques & French to investigate and defend any potential legal proceedings that may  
11 be within the terms and conditions of the aforementioned Star Net Insurance Policy.

12       6.     On or about November 11, 2008, the law offices of Kern and Wooley LLP were  
13 retained by Berkley to investigate and pursue any available additional insurance coverage  
14 from any insurance entity that may provide insurance coverage to Wyndham, et al. for  
15 defense and/or coverage involving the events of the Accident.

16       7.     From the time that Berkley accepted coverage for Wyndham, Berkley's  
17 interests have not been in conflict with Wyndham's interests.

18       8.     Confirmation of coverage also provides Berkley with the duty to investigate all  
19 other available coverages to Wyndham that may provide the duty to defend and/or coverage  
20 to Wyndham for claims arising out of said Accident.

21       9.     Section IV of the Policy provides that the insured "must cooperate with us in  
22 any way relating to your rights and ours under this Policy. Cooperation includes but is not  
23 limited to . . . your assistance in the enforcement of our rights against any person or  
24 organization who/that may be liability to you because of loss or damage for which this Policy  
25 provides insurance."

26       10.    Pursuant to the specific referenced policy provision, Wyndham is required to  
27 cooperate with Berkley to investigate and obtain all available coverages that may provide  
28 any coverage to Wyndham for events arising out of the accident. Wyndham has fully

1 cooperated with Berkley in pursuit of all available coverages.

2       11. From the date Berkley was informed of the Accident, they anticipated that  
3 litigation would evolve and took the necessary action to retain defense counsel, the Dombroff  
4 firm. On or after November 11, 2008, Kern and Wooley LLP was retained to investigate and  
5 take the appropriate action to seek all available coverages for the benefit of Wyndham. I, as  
6 a partner of Kern and Wooley LLP have been principally involved in this case, fully  
7 anticipated that there would be multiple litigation activity seeking recourse against Wyndham.

8       12. As counsel for Berkley, I routinely communicate with officers and employees of  
9 Berkley's insured, Wyndham, including Marcus Banks, Esq. and James Iervelino, as well as  
10 Wyndham's outside counsel.

11       13. Based upon my personal experience and practice of law, I knew and expected  
12 that all communications with Wyndham and Berkley, including but not limited to their  
13 employees, attorneys, persons and entities related thereto, would remain confidential and  
14 privileged under the law.

15       14. I also communicated with AIG Aviation on behalf of Berkley and Wyndham  
16 regarding Illinois National's coverage obligations for the Accident. AIG Aviation is Illinois  
17 National's claims administrator.

18       15. Berkley's communications to Wyndham, et al. involving the pursuit of insurance  
19 coverage on behalf of Wyndham involved my direct participation and/or were made at my  
20 direction in representing Berkley.

21       16. On May 4, 2009, I investigated and communicated with several law firms to be  
22 retained by Berkley to represent the interest of Wyndham for events arising out of the  
23 Accident. One of the law firms was Coughlin Duffy LLP. I had direct communication with  
24 Coughlin Duffy LLP regarding retention to act as defense counsel for Wyndham, et al.  
25 involving the lawsuit Illinois National Insurance Company v. Wyndham Worldwide  
26 Operations, et al., Docket No. 09-1724, filed in the United States District Court for the District  
27 of New Jersey (the "Illinois National lawsuit"). On May 4, 2009, pursuant to discussions with  
28 Berkley and Wyndham (Marcus A. Banks, Esq.) we finalized the retention of Coughlin Duffy

1 LLP, to represent Wyndham, et al. in the Illinois National lawsuit.

2 17. Berkley continues to investigate and participate in the defense of the  
3 Underlying Actions and the Illinois National lawsuit. Berkley has contractually agreed to pay  
4 all reasonable investigation and attorney's fees in the representation of Wyndham, et al.  
5 legal expenses associated with the Underlying Actions and the Illinois National lawsuit.

Robert M Kern  
ROBERT KERN, ESQ.

9 Sworn to and subscribed  
Before me this 1st day  
10 of April, 2010

12 Doris Jones (Wilder)  
Notary Public

